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A CITIZEN'S RIGHT OF REPLY:
A Northern Territory
perspective

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2. INTRODUCTION:

Presently, in the Northern Territory the practice and procedure of the Legislative Assembly restricts citizen's from a right of reply to Members of the Legislative Assembly (MLAs) statements, apart from approaching another Member to plead their case. Current legislation in the Senate and the ACT Legislative Assembly allows for the Privileges Committee to act as an adjudicator in cases where an individual or corporation seeks redress.

3. COMMONWEALTH:

A Joint Select Committee on Parliamentary Privilege was established by both Houses of Parliament in 1982.¹ In 1984, the Committee considered the issues involved in a citizen's right of reply. The Committee concluded that some form of rebuttal for citizens was required, stating:

We think the only practical solution consistent with the maintenance in its most untrammelled form of freedom of speech and the rights of members of the public to their good reputation may lie...in adopting an internal means of placing on record an answer to a Parliamentary attack. If such an answer is to have any efficacy, we think it should become part of the record of parliament so as to carry back to the forum in which the attack was made a refutation or explanation.²

The Committee suggested a model which would include persons applying directly to the Committee of Privileges of the relevant House, a rigorous screening of complaints and limits on what answers were to be incorporated into *Hansard*. (see reading 1)

¹ Lynch, Anne. "Cowards Castle" and the Public's Right of Redress - Senate Privilege Resolution No.5", *The Parliamentarian*. October 1989. p.236.

² The Parliament of the Commonwealth of Australia. House of Representatives Standing Committee on Procedure. *A Citizen's Right of Reply: Report, June 1991*. Canberra: AGPS, 1991. p.2.

In May 1987 during consideration of the *Parliamentary Privileges Bill 1987* resolutions were proposed which related to the protection of persons referred to in the House and provided for a similar mechanism proposed in 1984. No action was taken on the proposals.³

On February 25, 1988 the Manager of Government Business in the Senate moved that the previous resolutions (with minor modifications) be adopted by the Senate as Resolution 5 of 11 Privilege Resolutions. The essential elements were:

- persons may forward submissions (subject to certain rules) to the President:
- the right is only available to persons named or readily identified in debate in the Senate - it does not cover persons referred to by committee witnesses;
- a person must be able to claim that he or she has been 'adversely affected in reputation or in respect of dealings or associations with others or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference;
- if satisfied that a submission is not trivial, vexatious, frivolous or offensive, and that it is practicable for the Committee of Privileges to consider it, the President must refer it to the Committee of Privileges; and
- the Committee may confer with the person and Senator, and may report to the Senate either:
 - that no further action be taken, or
 - that the person's response in terms agreed by the person and the committee should be published or incorporated into *Hansard*.⁴ (see reading 2)

The House of Representatives was notified on March 15, 1988 of the Senate's resolution, but no action was taken. In June 1991 the Commonwealth House of Representatives Standing Committee on Procedure published a report *A Citizen's Right of Reply* (see full text in reading 3). The report highlighted that Parliamentary Privilege is derived from Article 9 of the Bill of Rights (1688) which allows for freedom of speech in parliament which "ought not to be impeached or questioned in any court or place out of parliament".⁵

The right of parliamentary reply to aggrieved citizens was discussed as agenda item 9, at the 1991 Twenty Second Regional Conference of Presiding Officers and Clerks. A paper prepared by the Australian House of Representatives was presented and issues were

³ Ibid, p.3.

⁴ Ibid.

⁵ Ibid, p.1.

discussed by delegates. Opinions varied as is evident in the following summation of proceedings:

- Ian Harris (Commonwealth of Australia) interpreted the paper “as another of the avenues that possibly could be opened between the legislature and the people the legislature serves.”⁶
- Jim Fouras (Queensland) responded by claiming he was not totally convinced that the right of reply would make much difference and would not be rushing to set up a committee to look at it.
- Max Willis (New South Wales) stated that the media was currently carrying out the most effective, immediate rebuttals for citizens.
- Kevin Rozzoli (NSW) commented that he regarded “any right of reply to be a procedure which is repugnant to the basic tenants of our system”⁷ which allows Members to speak on behalf of their constituents and the general public. Rozzoli believed that letting other people speak in parliament (through a Member) is against tradition.
- Alan Hunt (Victoria) pointed out that there were already avenues for dealing with Members who attack another person dishonestly by the Committee of Privileges. Hunt felt that the Senate procedure needed to be in operation for a longer time frame before judgement of it’s success or failure could be gauged.
- Peterson (South Australia) stated that “Parliament should always discipline its own”⁸ and that the media was being used effectively as a vehicle of rebuttal.
- Marquet (Western Australia) introduced the argument that an aggrieved person could already use a petition to ask for redress and that separate procedures for the same purpose were unnecessary.

Anne Lynch (Commonwealth of Australia) an advocate of a citizen’s right of reply, set out to analyse the report to those present at the conference, her points included:

- That the procedure is confined to the Senators in the Senate as a protection for people named in committee.

⁶ Conference of Presiding Officers and Clerks of the Parliament of Australia, Fiji, Nauru, Papua New Guinea and Western Somoa. “Agenda Item 9 - The Right of Parliamentary Reply to Aggrieved Citizen’s”, *Twenty-Second Regional Conference of Presiding Officers and Clerks. Honiara, Solomon Islands. Transcript of Proceedings. 23-25 July, 1991.* Canberra: AGPS, 1991. p.154.

⁷ Ibid. p.157.

⁸ Ibid. p.159.

- That houses of legislature, in reality, do not actively discipline their own members, and members do not always rise to an aggrieved citizen's defence, thus the saying 'cowards castle'.
- The right of reply procedure does not "evaluate, look at, test or judge either the comments the Senator has made, or the comments in response. They are not intended to be a test of truth, the one against the other. It is just a mechanism for allowing a citizen to put another side of the story."⁹
- Lynch believed the procedure is working well in the Senate and that initial fears that there would be a deluge of complaints was unfounded with 16 cases and 12 responses in a three and a half year period.

Lynch, under her capacity as the Deputy Clerk of the Senate published an article in *The Parliamentarian* entitled "Cowards Castle and the Public's Right of Redress - Senate Privilege Resolution No.5". (see reading 4) This article gave a detailed listing of people who have successfully utilised the right of reply process. (see reading 5 for example) Lynch recently reported since 1988:

...that only 22 responses have been recommended for publication, with a further five not proceeded with because the person concerned did not pursue the matter further after the Committee had made contact. In no case has the Committee refused a right of reply.¹⁰

4. HOUSE OF COMMONS:

The United Kingdom's House of Commons Procedure Committee recommended against a formalised right of reply, like that operating in the Senate, and put forward the following points:

- the time taken in the first case robbed the rebuttal of any immediacy;
- by allowing any rebuttal at all somebody is passing judgement on the Member;
- any refusal by an aggrieved person to take advantage of the procedure might be seen as an acceptance of the truth of the allegations; and
- the actual words objected to by the first complainant were not sufficiently damaging to justify a formal right of reply.¹¹

The Select Committee on Procedure published their first report in 1989 on the *Conduct of Members in the Chamber and the Alleged Abuse of Parliamentary Privilege*. (see reading 6)

⁹ Ibid. p.163.

¹⁰ Lynch, Anne. *Defamation and Parliamentary Privilege*. Australian Study of Parliament Group (Queensland Charter). 13.5.96. p.2-3.

¹¹ Parliament of New South Wales. Legislative Assembly. Discussion Paper. *Citizen's Right of Reply*. p.3-4.

5. WESTERN AUSTRALIA:

The 1989 *Report of the Parliamentary Standards Committee* in Western Australia considered a citizen's right of reply (Chapter 6) and recommended against the introduction of the procedure.¹² The Committee agreed with the House of Commons reservations and found the main issues faced by providing avenues for the right of reply were:

- the problems in developing the mechanics of the process;
- if the aggrieved persons do not avail themselves of the process, they may be taken to have agreed with the statements made about them;
- how to attract the same attention from or in the media to the reply as the statement prompting the complaint;
- how to confine the reply to the relevant issues;
- how to prevent the reply, no matter how balanced and reasonable, encouraging further continuation of the issue; and
- how to prevent an unreasonable expansion of the scope of parliamentary privilege.

The Committee recommended:

(a) "that the Parliament of Western Australia does not adopt any additional formal means of redress through judicial or parliamentary proceedings such as giving persons who claim to be adversely affected by statements, allegations or assertions made by Members of Parliament under parliamentary privilege any additional or particular opportunity to respond under the protection of parliamentary privilege." (10.15)

(b) "that an important part of the process of political education undertaken by the Parliament should be concerned with improving awareness of these avenues of redress already available." (10.16)¹³

(see reading 7)

6. AUSTRALIAN CAPITAL TERRITORY (ACT):

The Legislative Assembly for the ACT in August 1993, published the Report by the Standing Committee on Administration and Procedures entitled *Citizen's Right of Reply*. (see reading 8 for full report). The Committee was established in early 1992 and by December 2 had resolved to inquire into and report on the issue of a citizen's right of

¹² The Parliament of the Commonwealth of Australia. House of Representatives Standing Committee on Procedure. Op.cit., p.4.

¹³ Western Australia Parliament. *Report of the Parliamentary Standards Committee, Vol.1. Report, Findings and Recommendations*. 1989. p.57.

reply in respect of applying the Senate's resolution to the Assembly. This publication gives detailed information including summaries of :

- the first recommendation to adopt mechanisms in the *Inquiry Into the Proposed Ethics Committee/Code of Conduct*;
- the "Gold Incident" involving allegations of involvement of a citizen in the X-rated video industry;
- freedom of speech versus right of reply;
- current procedures for redress;
- time constraints;
- judgement of the Member;
- failure to use the procedure;
- does the assembly need right of reply? and
- what form should it take?

(The NSW Discussion paper (reading 10) has a condensed summary of all these issues.)

The Committee concluded that the "potential benefits to the citizens that the Assembly serves, outweigh the drawbacks that may exist in relation to the process".¹⁴ The Senate's resolutions were deemed suitable for the use in the Assembly with a time limit of 3 months applying to any request by the parliamentary body for further submissions from the citizen or corporation. The Committee also believed that for the effective implementation of the process:

...the mechanism of the right of reply be established in conjunction with a resolution outlining the responsibilities of a Member in exercising freedom of speech.¹⁵

On May 4, 1995 Mr Moore sought leave to move together motions regarding citizen's right of reply and freedom of speech under "protection of persons and corporations referred to in the Legislative Assembly". The procedures were debated and the question was resolved in the affirmative. (see reading 9)

7. NEW SOUTH WALES (NSW):

In May 1996 the NSW Parliament proposed the introduction of a scheme that would give individuals and groups the right of reply to accusations made in parliament. NSW Premier Bob Carr said changes to legislation or parliamentary standing orders would be

¹⁴ Legislative Assembly for the Australian Capital Territory. Report of the Standing Committee on Administration and Procedures. *Citizen's Right of Reply*. August 1993. p.16.

¹⁵ Legislative Assembly for the Australian Capital Territory. Report of the Standing Committee on Administration and Procedures. *Citizen's Right of Reply*. August 1993. p.17.

modelled on the right of reply scheme that has operated in the Federal Senate since 1988.¹⁶ (see NSW *Hansard* reading 11)

A recent discussion paper on *Citizen's Right of Reply* was produced for the Standing Orders and Procedures Committee of the NSW Legislative Assembly. (see reading 10) The paper gives an overview of the current situation and has attached the proposed sessional orders, which include:

- when an acceptable submission has been made to the Speaker by a person referred to in the Legislative Assembly the Speaker shall refer the submission to the Standing Orders and Procedure Committee;
- the Committee may decide not to consider the submission if it does not adhere to the appropriate guidelines;
- the Committee may confer with persons involved in the submission;
- the Committee will meet in private sessions for consideration of submissions:
- submissions shall not be published;
- the Committee will not be the judge of truth in any statements;
- the Committee may either take no further action or have a succinct and strictly relevant response published by the Legislative Assembly or in *Hansard*; and
- a corporation making a submission must do so under their common seal.¹⁷

8. A CITIZEN'S RIGHT OF REPLY: A NORTHERN TERRITORY PERSPECTIVE:

In April 1994 the Clerk of the Northern Territory Legislative Assembly gave a briefing to the members of the Northern Territory Standing Orders Committee concerning procedures of citizen's right of reply operating in the Senate and the ACT Legislative Assembly. Recommendations from the 1991 House of Representatives Procedure Committee report (which was under consideration, still) were also presented. The Committee indicated that it might consider in the future the implementation of a sessional order or standing order to allow citizen's the right of reply. The matter was placed under consideration for further discussion.

During November and December in 1994 a citizen's right of reply was publicly debated through the letters to the editor's page of the *NT News* (readings 13-17). Ted Warren called for the right of citizen's who have been defamed or aggrieved to have a written reply read out in Parliament by a MLA under Parliamentary Privilege so that their words would be recorded in *Hansard*. These changes were controversial as it had been argued such changes could threaten to abolish Parliamentary Privilege, as derived from the Bill

¹⁶ No author. "Hit Back in Parliament Plan", *NT News*. 28.5.96. p.14.

¹⁷ Parliament of New South Wales. Legislative Assembly. *Citizen's Right of Reply (Discussion Paper)*. c.1996.

of Rights, but conversely consideration was called upon by Warren to consider a citizen's right to speech through the right of reply procedure.¹⁸

The recent consideration of the NSW Parliament to implement a scheme to allow a citizen's right of reply was supported by the Northern Territory Opposition. Barry Coulter, Leader of Government Business, was quoted in the *NT News* as saying he would take the proposal to the CLP's parliamentary wing for further consideration and discussion.¹⁹ (reading 18)

9. CONCLUSION:

A citizen's right of reply will continue to be placed on the agenda's of parliamentary privilege and procedure committees. The New South Wales Legislative Assembly's investigations into a citizen's right of reply will be monitored closely by the Northern Territory. Consideration of other legislatures in coming to terms with problems associated with a citizen's right of reply, will no doubt, fuel the fire for further debate among members of the Northern Territory Standing Orders Committee and all those concerned with freedom of speech.

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3. The Parliament of the Commonwealth of Australia. House of Representatives Standing Committee on Procedure.

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4. Lynch, Anne.

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¹⁸ Warren, Ted. "Citizen's Need Right of Reply", *NT News.* 19.11.94. Setter, Rick. "Pursue Colleagues". *NT News* 29.11.94. Warren, Ted. "Put Words into Action", *NT News.* 5.12.94. Setter, Rick. "Wrong on Both Counts", *NT News.* 17.12.94. Warren, Ted. "The Citizen's Right to Reply", *NT News.* 23.12.94.

¹⁹ No Author. "Hit Back in Parliament Plan", *NT News.* 28.5.96.

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